FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 22 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 770

JAY H. TAYLOR,

Appellant,

vs.

KENTUCKY STATE BAR ASSOCIATION.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF KENTUCKY

STATEMENT AS TO JURISDICTION

JAY H. TAYLOR, *pro se.*

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Statutes of the state the validity of which is involved	2
Rules adopted by the Court of Appeals of Kentucky	3
By-laws of the Kentucky State Bar Association	10
Date of judgment and date of application for appeal	3
Nature of case and rulings below	13
Substantiality of questions involved	16
Cases sustaining the jurisdiction	20
Appendix—Opinion of the Court of Appeals of Kentucky	22

Table of Cases Cited

Aspen Mining & Smelting Co. v. *Billings*, 150 U. S. 31	12, 20
Garland, Ex parte, 4 Wall. 333	21
Hamilton v. *Regents of the University of California*, 293 U. S. 245	17
Herbert v. *Louisiana*, 272 U. S. 312, 71 L. Ed. 111, 47 S. Ct. 103	21
Lawrence v. *State Tax Commission*, 286 U. S. 276, 76 L. Ed. 1102, 52 S. Ct. 556	20, 21
Ward and Gow v. *Krinsky*, 259 U. S. 503, 66 L. Ed. 1033, 42 S. Ct. 529	21

Statutes Cited

By-laws of the Kentucky State Bar Association:	
Section 6	10
Section 7	11, 20
Section 12	11, 20
Section 13	11, 20

Page

Constitution of the United States:
Article I, Section 10 21
14th Amendment 12, 20

Kentucky Revised Statutes:
Section 30.100 ..... 2, 15, 17, 18
Section 30.170 ..... 2, 12, 19

Rules of the Court of Appeals of Kentucky:
Rule 12 3
Rule 13 ..... 6, 19
Rule 14 ..... 9, 19
Rule 15 ..... 9, 19
Rule 16 10

United States Code, Title 28:
Section 344(a) 1, 21
Section 350 13

COURT OF APPEALS OF KENTUCKY

OCTOBER TERM, 1945

No. 770

JAY H. TAYLOR,

Appellant,

vs.

KENTUCKY STATE BAR ASSOCIATION,

Appellee.

STATEMENT IN SUPPORT OF JURISDICTION

Appellant, Jay H. Taylor, in support of the jurisdiction of the Supreme Court of the United States to review the above styled action on appeal respectfully represents:

1

Statutory Provisions Sustaining Jurisdiction

The statutory provision which sustains the jurisdiction of the Supreme Court of the United States is 28 U. S. C. A. 344(a) reading, to the extent relevant here, as follows:

> "Section 344(a): A final judgment or decree in any suit in the highest court of a state in which a decision of the court could be had where is drawn in question * * * the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States and the decision

1*f*

is in favor of its validity may be reviewed by the Supreme Court upon appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed by a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State Court and may, in its discretion, award execution or remand the cause to the court from which it was removed by the appeal."

Statutes of the State the Validity of Which Is Involved

The Statutes of the Commonwealth of Kentucky the validity of which have been sustained by a final decree of the Court of Appeals of Kentucky, the highest Court of this Commonwealth, as not being violative of, or repugnant to, the Constitution and laws of the United States are Kentucky Revised Statutes 30.100 and Kentucky Revised Statutes 30.170, and the Rules and Regulations adopted under said latter section by the Court of Appeals of Kentucky and the Kentucky State Bar Association, the pertinent provisions thereof being:

"KRS 30.100—No person convicted of a felony shall be permitted to practice law in any court."

"KRS 30.170—The Court of Appeals shall adopt and promulgate rules:

"(a) Defining the practice of law;

"(b) Prescribing a code of ethics governing the professional conduct of attorneys and the practice of law;

"(c) Establishing practice and procedure for disciplining, suspending and disbarring attorneys;

"(d) Organizing and governing a Bar Association of the attorneys of the state to act as an administrative agency of the Court of Appeals for the purpose of enforcing such rules as are adopted

and promulgated by the court under this section; providing for the government of the State Bar as a part of the judicial department of the state government, and for such divisions thereof as the Court of Appeals determines; requiring all persons practicing law in this state to be members in good standing of the State Bar; and fixing the form of its organization and operation;

"(e) Fixing fees, not exceeding three dollars per year, to be paid for the purpose of administering this section and the rules adopted and promulgated under it, and for the collection and disbursement of such fees.

"(2) The rules of court adopted and promulgated under this section shall supersede all laws or parts of laws in conflict therewith, to the extent of the conflict.

"(3) No rule adopted and promulgated under this section shall prevent a person not holding himself out as a practicing attorney from writing a deed, mortgage or will, or prevent a person from drawing any instrument to which he is a party."

Rules Adopted by the Court of Appeals of Kentucky:

"Rule 12: The Board shall have power to investigate and pass upon all complaints which may be made concerning the professional conduct of members of the State Bar, including any professional act for which liability to prosecution exists under the laws of any state or of the United States, and any other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud a client or the public, or to deceive or obstruct a public officer in the discharge of his official duty, and may investigate and pass upon such matters upon its own motion. Such complaints shall be in writing, shall be signed by the complainant or his attorney, or if instituted by the Board of Bar Commissioners, shall be signed by the President and attested by the Secretary, and shall state with reason-

able particularity the acts of professional misconduct complained of, and the present address of the accused, if known, and shall be filed in quadruplicate with the Secretary of the Board, who shall endorse upon each copy the date on which the same was filed, and promptly mail or cause to be delivered one copy to the person against whom the complaint is filed; if two or more members of a firm of attorneys are named in the complaint it shall be sufficient to mail or deliver one copy to the firm. The Secretary in mailing or causing to be delivered to the person complained of a copy of the complaint shall, in writing, advise the person complained of that he must file a written answer in quadruplicate with the Secretary of the Board within fifteen days from the date the complaint is mailed to him. If the party complained of fails to file an answer within fifteen days from the date that a copy of the complaint is mailed to him by the Secretary of the Board, then unless additional time is granted by the Board, or a Trial Committee thereof, to file such answer, neither the Board nor its Trial Committee shall be required to conduct a hearing or to receive proof unless they in their discretion deem it necessary. Where an answer has not been filed the Board may treat the allegations of the complaint as confessed.

"After an answer has been filed the Board or a Trial Committee appointed by the President shall fix the time and place for the hearing; provided, however, said hearing shall be conducted at a place within the Appellate District where the party complained of resides, except that by consent of both parties it may be held elsewhere; and provided, further, that the party complained of shall have not less than ten days written notice of the time and place of said hearing. The Board or a Trial Committee of at least two Commissioners appointed by the President shall have power to conduct such hearing. The testimony at such hearing may be given orally or by deposition, subject to the same limitations and exceptions regarding the taking and use of depositions as exist in the trial of equity actions.

All the evidence adduced by the parties at the hearing shall be reduced to writing, and from such evidence the Board shall render such award as may be proper. Where in any proceeding evidence has been taken under oath upon due notice to the accused attorney and at the taking of which said attorney has appeared, either in person or by counsel, or as attorney for any party, a duly certified transcript of said evidence may be used as evidence in any investigation or hearing by the Board of Commissioners or a committee thereof involving the same charge or any charge growing out of the matter connected therewith, and such transcript and the record in such proceedings may be made a part of the record on such investigation or hearing; provided, that either party to the proceeding before the Board may recall any witness, if available, for further examination. All applications for reinstatement to the practice of law by persons who have been suspended or disbarred, whether or not their time of suspension or disbarment has elapsed, shall be made to the Court of Appeals and shall be filed in the office of the Clerk of the Court. Thereupon such applications shall be referred to the Board for hearing. After hearing, the Board shall make its recommendations, which shall be filed with the Court of Appeals for entry of such order thereon as the Court may deem advisable. It matters not by what tribunal the applicant was disbarred, the method of reinstatement herein provided shall be exclusive:

"Provided: (1) That hereafter no application for reinstatement shall be considered until all costs incurred in the proceedings which resulted in the disbarment or suspension have been paid and satisfied in full by the applicant; (2) that hereafter no application for the reinstatement of an attorney who has been suspended from the practice of law shall be considered during the period of his suspension, except upon the ground of newly discovered evidence upon the original complaint. (3) that hereafter no application for the reinstatement of a disbarred attorney shall be con-

sidered until five years have elapsed from the effective date of the order of his disbarment, except upon the ground of newly discovered evidence upon the original complaint. If an application for reinstatement by a disbarred attorney has been filed and refused no additional or further application for reinstatement by him shall be considered within three years from the date of the refusal to reinstate him upon the last preceding application."

"Rule 13: Findings and Review. The Board may, if the evidence justifies such a course, take such disciplinary action by public or private reprimand as the case may in its judgment warrant, entering a minute of its action upon the record of the proceedings.

"In all cases where the Board may find that the party or parties complained of should be suspended from practice, or excluded or disbarred therefrom, a copy of its findings and award, together with a statement of the costs incurred by the Board in conducting the investigation, shall, within ten days after same is rendered, be filed in the office of the Clerk of the Court of Appeals, and a copy thereof mailed, or otherwise delivered to the party against whom such findings and award are made. Thereupon the Clerk shall issue a rule, directed to the party against whom the findings and award shall have been rendered, requiring said party to appear before the Court of Appeals, or file due response, and show cause why said award shall not be enforced by appropriate orders of the Court so suspending or disbarring such party. If such party fails to appear or file due response within the time allowed by the rule, which shall be not less than twenty (20) days after the service thereof, the party so failing shall be adjudged in default, the rule shall forthwith be made absolute and an order of suspension or disbarment entered in conformity therewith. If response be made, the person against whom the Board's award was rendered shall file, with his response, a good and sufficient bond with surety acceptable to the Clerk of the Court of Appeals in an amount to be

approved by the Clerk, conditioned that if the principal of the bond be disbarred, suspended or otherwise disciplined by the court, he will promptly pay all costs incurred in the proceedings unless said party shall file his response in forma pauperis; provided, however, that the amount of such costs shall be certified, at the time the principal of the bond is called upon to pay them, by the Treasurer of the Kentucky State Bar Association to the Clerk of the Court of Appeals. If response be made, the parties will be entitled to file briefs, and upon submission of the matter, the Court will enter such appropriate order as it may deem proper upon the facts appearing in the record of proceedings. If the party against whom the findings and award of the Board have been rendered shall, upon appearance or response to such rule, satisfy the Court by affidavits of witnesses that their testimony is material and that their evidence could not by the exercise of reasonable diligence have been produced before the Board, or its committee, the Court in advance of judgment on the rule, may in its discretion, remand the cause to the Board with directions to receive further evidence upon such matters and to such extent as the Court may direct; following such rehearing by the Board, the practice and procedure shall be the same as regulate its original findings and award and review thereof by the Court. An order of suspension or disbarment by the Court shall take effect immediately upon the entering by the Court of its opinion and order without prejudice to the right of the respondent attorney to file a petition for rehearing; provided that the mandate shall be forwarded to the Circuit Clerk of the County of respondent's residence.

"No response to a rule issued to show cause why the award of the Board of Bar Commissioners should not be enforced shall be filed in the office of the Clerk of the Court of Appeals until a bond for the payment of the costs of the complaint in the event the findings and award before the Bar Commissioners are sustained shall be executed by the party against whom the rule

is issued in the manner required by law, unless said party shall file his response in forma pauperis.

"Every judgment of suspension or disbarment or reprimand shall provide for the recovery from the respondent of all costs, including those incurred by the Board of Bar Commissioners, and immediately upon the effective date of said judgment the Clerk of the Court of Appeals shall issue a cost bill and mail or otherwise deliver the same to the party against whom such a finding and order is made and if the cost bill be not satisfied within ten days thereafter, then the Clerk of the Court of Appeals shall issue an execution thereon directed to the Sheriff of the County in which said party resides, and if upon the execution the Sheriff shall return the same "no property found" then the matter shall be referred to a standing Committee on Costs of the Board of Bar Commissioners, which Committee shall have power to institute bills of discovery and to take any other necessary or proper legal proceedings to enforce the collection of said cost bill, and said Committee shall have further power to expend any necessary funds in the investigation and prosecution of said actions to recover said costs, including the right to employ counsel therefor. The costs incurred by the Board of Bar Commissioners, as certified, shall be refunded by the Clerk of the Court of Appeals to the Treasurer of the Kentucky State Bar Association out of the costs collected by him in each case.

"In all proceedings hereunder, if the complainant is not otherwise represented, the Board may appoint counsel to represent him in the prosecution of such complaint before the Board; or may, on application for reinstatement, appoint counsel to investigate the application and to see that the case is properly presented before the Board; the expenses of such counsel to be allowed by the Board, payable out of the funds of the State Bar; The Attorney General of the Commonwealth shall act as attorney for the Board in all such cases before the Court of Appeals, and in

any legal proceeding which may be brought against the Board in their capacity as such.

"In all cases in which response is made in the Court of Appeals to the findings and award of the Board of Bar Commissioners where complainant has been represented by counsel, either of his own appointment or designated by the State Board of Bar Commissioners or its Trial Committee, such counsel may jointly with the Attorney General of the Commonwealth represent the complainant and Board of Bar Commissioners in all such cases before the Court of Appeals.

"Nothing in these rules shall be construed as limiting or altering the power of the Courts of this State to discipline or disbar attorneys at law as this power at present exists."

"Rule 14—Power of Subpoena: In any investigation or hearing provided for herein, the Board and any committee appointed by it for this purpose, shall have power to summon and examine witnesses under oath and compel their attendance and the production of books, papers, documents and other writings necessary or material to the inquiry. Such summons or subpoena shall be issued under the hand of the Secretary of the Board or the Chairman of any duly constituted sub-committee of the Board, and shall have the force of a subpoena issued by a court of competent jurisdiction, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or who shall refuse to be sworn or testify or produce books, papers, documents or other writings demanded, shall be liable to attachment upon application to any judge of the Circuit Court for the district where the investigation is conducted, as in cases of contempt.

"Rule 15—Rights of Accused Member: Any member of the State Bar complained of shall at any investigation or hearing have full opportunity to defend by the introduction of evidence and the cross-examination of witnesses called against him, and the right to

be represented by counsel, who may be appointed by the Board where the respondent is not able to employ counsel. He shall also have the right to require the Secretary of the Board to summon witnesses to appear and testify or produce books, documents, or other writings necessary or material to his defense in like manner as above provided.

"Rule 16: A complete record of the proceedings and evidence taken by the Board of any committee, shall be preserved by the Board, but it may, where sufficient reason appears and the accused gives his consent, cause the same to be expunged."

By-Laws of the Kentucky State Bar Association:

"Section 6—Complaints. In cases where a complaint is made by or on behalf of a client of the accused member it shall be accompanied by the complainant's written undertaking to the Board either (a) that the complainant, or some other person having knowledge of the matters complained of, will personally attend the hearing of the complaint and testify as to the matters contained therein, or (b) that, if such attendance is impracticable or entails an unreasonable expense, the complainant will, after the accused has been notified of the time of hearing and upon due notice to the accused of the time and place of taking, give his deposition in support of the complainant, or, if he does not have personal knowledge of the matters complained of, will cause to be taken the deposition of a person having such knowledge, to be introduced as evidence at the hearing; and the President shall not appoint a committee to hear such complaint, as provided in By-Law (4) until such an undertaking has been given.

"If the President deems a complaint unfounded or frivolous, he may withhold action thereon until the next meeting of the Board at which time he shall submit it to the Board for action; Provided that, except in cases where a fee or deposit for costs has been paid the accused member in advance, a complaint that

is based solely upon the failure of the accused member to answer letters or to do so punctually or to prosecute the complaining client's business with such diligence as he desires or expects, shall be deemed a frivolous complaint, and the President may decline to entertain it, without referring the matter to the Board.

"The Board may, without investigation, decline to entertain any complaint which appears to be unfounded or frivolous. The complainant shall be notified by mail of such action and may, within ten days after such notification, petition the Board to reconsider said action. Said petition shall be in writing and may contain additional facts and may contain argument and shall be verified as to all facts therein contained."

"Section 7. Investigations shall not be public except when ordered by the Board, and, except when ordered by the Board, the file and record and transcript of an investigation shall not be open for inspection until a copy of the finding and award is filed in the office of the Clerk of the Court of Appeals, except to members of this Board, officers of the State Bar, their assistants, the accused and his counsel and the complainant and his counsel."

"Section 12. The only pleadings permissible are the complaint and an answer. Demurrers and preliminary motions are not allowed, nor shall technical rules of pleading be available. All such objections must be made in the written answer. All answers shall be verified by the accused, and all affirmative allegations therein stand controverted of record."

"Section 13. The committee, at any time prior to the conclusion of the hearing, or the Board prior to the making of an award, may allow or require amendments to the complaint or allow amendments to the answer. The complaint may be amended to conform to the proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case

an amendment is made, the accused shall be given a reasonable time to answer the amendment, to procure evidence and to defend the matters charged therein."

Each of the foregoing sections of Kentucky Revised Statutes, and the Rules and By-Laws adopted pursuant to KRS 30.170, is believed to be in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States as said sections of the Statute and Rules and By-laws were applied to the conduct of appellant's profession under the opinion of the Court of Appeals of Kentucky.

KRS 30.170 and the Rules and By-laws adopted thereunder are believed especially to conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States because of the manner and means by which the proceedings from which this appeal is prosecuted were conducted, said proceeding resulting in the disbarment of this appellant from the further practice of law as an attorney in the Courts of the Commonwealth of Kentucky.

3

Date of Judgment and Date of Application for Appeal

The date of the final decree of the Court of Appeals of the Commonwealth of Kentucky which is sought to be reviewed was June 22, 1945.

Appellant's motion for a rehearing was denied on October 5, 1945.

The time for taking the appeal began to run on the date of the denial of said petition for rehearing, to-wit: October 5, 1945.

Aspen Mining & Smelting Co., v. *Billings*, 150 U. S. 31.

The date on which the application for appeal was presented and the appeal allowed was November —, 1945.

Under the provisions of 28 U. S. C. A. 350 the appellant may bring his appeal within three months after the entry of the decree by the Court of Appeals of Kentucky.

4

Nature of Case and Rulings Below

On December 2, 1943, complainant, O'Dell Collett, by and through his attorney, D. M. Bingham, filed complaint with the Kentucky Bar Association charging in ten separate counts as many instances in which it was alleged that your appellant, Jay H. Taylor, was guilty of such improper and unethical practice that he should be disbarred from the practice of law in the Commonwealth of Kentucky (Record before Kentucky State Bar Association, pages 2 to 8).

To said complaint appellant filed demurrer and motion to strike (Record before Kentucky State Bar Association, page 14) and without waiving said demurrer and motion to strike, filed answer (Record before Kentucky State Bar Association, pages 9 to 13). A Trial Committee of the Kentucky State Bar Association conducted a hearing in Pineville, Bell County, Kentucky, on February 17 and 18, 1944, and at the completion of that hearing gave leave to the parties to complete the taking of testimony by deposition. After the depositions were taken and filed, the Trial Committee filed its report to the Kentucky State Bar Association (Record before Kentucky State Bar Association, pages 17 to 28) wherein all of the charges except those contained in Paragraphs 7 and 8, which paragraphs were considered together, and the charge contained in Paragraph 10, were dismissed or found not to justify disbarment. It was admitted by appellant that he had been convicted of a felony (voluntary manslaughter) some twenty-five years before the charges were filed, but it was plead that he had received a full and complete pardon for

that offense, which pardon was based, among other things, on the grounds of appellant's failure to receive a fair and impartial trial. The pardon is not contained in the record, it having been lost before this proceeding began, but from all the testimony the Trial Committee made a finding of fact that a pardon was actually issued in favor of appellant, Jay H. Taylor (Report of the Trial Committee, page 6) and a certified copy of a portion of the record in the office of the Secretary of State of Kentucky which is found in the record marked "Jay H. Taylor—Exhibit B" reads in part:

> "He was not allowed to make a showing or offer evidence to substantiate his position in this respect and the main issue, threats and rash talk, was kept from the jury."

Nevertheless, the Trial Committee in its report used this language:

> "• • • an order of disbarment should be entered against the respondent on account of his conviction for manslaughter." (Report of Trial Committee, page 9).

As to Paragraph 10 of the complaint, the Trial Committee used this language: (Report of Trial Committee, page 11).

> "From a consideration of all of the facts, it appears that the respondent while undertaking to practice as an attorney at law, sat idly by and heard a witness testify to a known falsehood in a case in which the respondent was interested. It is the opinion of the Trial Committee that the respondent thereby lent his aid to the perpetration of a fraud upon the Harlan Circuit Court and that his actions therein are sufficient to justify an order of disbarment be entered against him."

The Board of Bar Commissioners of the Kentucky State Bar Association did on October 7, 1944, file with the Court of Appeals of Kentucky its "Findings and Award" wherein it adopted the findings of the Trial Committee and recommended to the Court of Appeals that this appellant, Jay H. Taylor, be permanently disbarred from the further practice of law in the Commonwealth of Kentucky for the two reasons recommended by the Trial Committee, namely:

(1) Conviction of a felony;

(2) Lent aid in perpetration of fraud upon the Harlan Circuit Court.

On October 7, 1944, the Court of Appeals of Kentucky issued a rule against appellant, Jay H. Taylor, to show cause why the recommendations of the Kentucky State Bar Association should not be enforced by the Court of Appeals. This rule was served upon your appellant on October 9, 1944, and on October 23, 1944, your appellant filed a motion to quash the rule. On October 27, 1944, appellant filed his motion, supported by affidavit, to prosecute the cause in forma pauperis, which was sustained by the Court and on the same day, October 27, 1944, he filed his answer and response wherein he admitted the conviction of a felony, but pleaded his pardon by the Governor as a bar to Ground One upon which disbarment was recommended, and further plead that Kentucky Revised Statutes 30.100 is unconstitutional under both the State and Federal Constitutions; that if he be wrong in that contention, said section does not apply to him because he has been fully pardoned by the Governor of the Commonwealth of Kentucky, and further contended that the Trial Committee erred in not letting him go behind the judgment of conviction, and further denied Ground Two

recommended as grounds for disbarment in the Finding and Award of the Board of Bar Commissioners.

The case was passed to the 1944 fall term of the Court of Appeals and on June 22, 1945, the Court rendered its decision confirming the recommendations of the Board of Bar Commissioners of the Kentucky State Bar Association and disbarring appellant from the further practice of law in the Courts of the Commonwealth of Kentucky.

On July 20, 1945, your appellant filed his petition for rehearing in which he further attacked the constitutionality of KRS 30.100, KRS 30.170, and Sections 6, 7, 12 and 13 of the By-laws of the Kentucky State Bar Association, which By-laws governed the procedure of the hearing appealed from and which were adopted under Rules 12, 13, 14, 15 and 16 of the Court of Appeals of Kentucky. The petition for rehearing was overruled on October 5, 1945, and this appeal follows.

It is appellant's contention that the sections of Kentucky Revised Statutes set out above, and the Rules and By-laws adopted thereunder are unconstitutional as denying your appellant the equal protection of the laws, the privileges and immunities that are his by reason of being a citizen of the United States of America, and of his right to earn a living in a lawful and legitimate profession, without due process of law.

Substantiality of Questions Involved

Your appellant respectfully represents that the questions involved in his appeal to the Supreme Court of the United States are of a substantial nature. It is well established that an appeal will not be dismissed for want of a substantial Federal question unless the contentions of the appellant are "clearly not debatable and utterly lacking in

merit." See *Hamilton* v. *Regents of University of California*, 293 U. S. 245.

The issue raised by appellant's contention that the Kentucky Statute (KRS 30.100) here in question violates the "Equal Protection Clause" of Section 1 of the Fourteenth Amendment to the Constitution of the United States involves the problem of discriminatory legislation. KRS 30.100 provides that:

> "No person convicted of a felony shall be permitted to practice law in any court."

It cannot be denied that each of the several states has power and authority to provide qualifications to the end that those in a certain class may practice law in its courts, and that those falling outside that class cannot so practice, but it is appellant's contention here that the Statute under discussion is an arbitrary classification because it does not bear any relationship to the ends sought to be accomplished by the legislation; namely, protecting the public from those unscrupulous persons who do not possess sufficient moral character to hold themselves out as attorneys-at-law. This Statute applies not only to those persons who have been convicted of a crime involving moral turpitude, but also places within that same classification those persons who have been convicted of any felony whatsoever, even though not involving moral turpitude. This appellant was convicted more than twenty-eight years ago of the crime of manslaughter which is denounced as a felony in Kentucky, but nowhere in this record is there any intimation that there was anything involved in his trial or conviction that would indicate any unreliability or immorality in his dealings with any clients whom he might represent in the Courts of this Commonwealth.

KRS 30.100 was designed to safeguard the citizens at large from being preyed upon by unscrupulous and immoral

practitioners of the law and when it went so far as to exclude all who had been convicted of a felony from the practice of law, without regard to whether their conviction had been based upon moral turpitude, the result was a statute which deprives this appellant, and all those others who would reasonably fall within his class, of the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

The issue raised by appellant's contention that KRS 30.100 violates the "Due Process of Law" clause of Section 1 of the Fourteenth Amendment of the Constitution of the United States also involves the problem of discriminatory classification. It is appellant's contention that any state legislation such as KRS 30.100 which places your appellant and others similarly situated in a classification for purposes of setting out who may and who may not practice law in the courts of this Commonwealth, to which classification he does not naturally belong, deprives him of property without due process of law by taking from him arbitrarily his right to engage in a legitimate and legal profession and to thereby earn his livelihood.

It is further contended by appellant that KRS 30.100 as construed by the Court of Appeals of Kentucky in the opinion appealed from as making mandatory the disbarment of this appellant from the practice of law because he was convicted of manslaughter (a felony) more than twenty-five years before charges were brought against him and after he had received a full pardon from the Governor of the Commonwealth of Kentucky upon the grounds that he had not received a fair trial, amounts to a finding by the Legislature that this appellant, and those similarly situated, shall be deprived of the right to earn a living in an honored profession under a legislative finding which does not in any manner relate to the moral qualifications of this appellant and others for the practice of law, and is therefore violative

of Section 10 or Article I of the Constitution of the United States, which section provides that no State shall pass any Bill of Attainder.

The issue raised by appellant's contention that KRS 30.170 here in question violates Clause I of the Fourteenth Amendment to the Constitution of the United States is based upon the delegation to the Court of Appeals of Kentucky by that section of unlimited power to (a) define the practice of law; (b) prescribe a code of ethics governing such practice; (c) establish practice and procedure for disciplining, suspending and disbarring attorneys; (d) organizing and governing a Bar Association and requiring all persons practicing law in the State to be members thereof; (e) fixing fees for the admission to the Bar Association and for the administration of the section and the rules adopted under it; (f) because said section provides that Rules of the Court of Appeals adopted and promulgated thereunder shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict; (g) because rule 12 adopted under said section of the Statute delegates to a Board of Bar Commissioners elected by the members of the State Bar Association the power to investigate and pass upon all complaints that may be made concerning the professional conduct of members of the State Bar Association, and as said rule has been applied in the opinion appealed from, permits any person, whether aggrieved or not, or an interested party or not, to bring such charges or complaints; (h) because Rules 13, 14 and 15 give to the Board of Bar Commissioners the right to delegate their authority to hear complaints to still another agency to be known as a Trial Committee, and the Board or the Committee is given power to compel the attendance of witnesses and conduct the hearing; (i) because said Section 6 of the By-laws of the Kentucky State Bar Association govern-

ing procedure before the Committee of said Association provides that the Bar Association may hear complaints made by any person against any attorney-at-law whether said complainant have actual knowledge of any wrong-doing or not, and that the person so complaining may cause others who might know of such wrong-doing to appear and testify against the accused; (j) because Section 7 of said By-laws gives the Board power and authority to deny to the attorney complained against the right of a public hearing; (k) because Section 12 of said By-laws limits the accused to certain defenses; (l) because Section 13 of said By-laws allows the complaint to be amended and added to at any time before or after the commencement of the hearing, thereby allowing the accused to be perpetually harassed; (m) and that all of said provisions deny to the accused, appellant in the instant case, the equal protection of the laws and the inherent rights accruing to him as a citizen of the United States of America, and of his right to earn a livelihood, all without due process of law and in violation of Clause I of the Fourteenth Amendment to the Constitution of the United States.

7

Cases Sustaining the Jurisdiction

The following cases sustain the jurisdiction of the Supreme Court of the United States:

1. Timeliness of appeal—*Aspen Mining & Smelting Co.* v. *Billings,* 150 U. S. 31.

2. Jurisdiction to entertain an appeal from a State Court on the ground that a State Statute violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States—*Lawrence* v. *State Tax Commission,* 286 U. S. 276, 76 L. Ed. 1102, 52 Sup. Ct. 556.

3. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State Statute violates the Privileges and Immunities Clause of the Fourteenth Amendment to the Constitution of the United States—*Lawrence* v. *State Tax Commission*, 286 U. S. 276, 76 L. Ed. 1102, 52 Sup. Ct. 556.

4. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State Statute violates the Due Process of Law Clause of the Fourteenth Amendment to the Constitution of the United States—*Ward and Gow* v. *Krinsky*, 259 U. S. 503, 66 L. Ed. 1033, 42 Sup. Ct. 529; *Herbert* v. *Louisiana*, 272 U. S. 312, 71 L. Ed. 111, 47 Sup. Ct. 103.

5. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State Statute violates the Bill of Attainder Clause of Section 10, Article I, of the Constitution of the United States—*Ex Parte Garland*, 4 Wall. 333.

Therefore, appellant, Jay H. Taylor, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of 28 U. S. C. A. 344 (a).

JAY H. TAYLOR,
Petitioner and Appellant.

APPENDIX

IN COURT OF APPEALS

In Re Jay H. Taylor

Opinion by Commissioner Stanley

Confirming Report of Bar Commissioners Disbarring Respondent

The Board of Bar Commissioners has recommended that the respondent, Jay H. Taylor, of the Bell County Bar, be disbarred from the practice of law upon the grounds that (1) he has been convicted of a felony, and (2) he has aided in the perpetration of a fraud on the court. A number of other charges were made involving the respondent's negligence and unfaithfulness to his clients and certain unethical practices. There is also some evidence of public drunkenness. However, these other charges were dismissed by the trial committee of the Bar Commissioners either because not sustained or not of sufficient consequence to justify action.

The first of the counts or grounds upon which disbarment is recommended presents an unusual condition. In February, 1917, the respondent was convicted of voluntary manslaughter and sentenced to the penitentiary for an indeterminate period of five to six years. He had been previously found guilty of murder in the case but the judgment was reversed because of erroneous instructions. Taylor v. Commonwealth, 172 Ky. 136, 188 S. W. 1087. It appears that notwithstanding the requirement of Section 97 of the Kentucky Statutes (now Ky. Rev. Stats. 30.100) he was not disbarred as a practicing attorney. About a year later Taylor was pardoned by Governor Stanley for the assigned reasons that the killing grew out of a bitter political campaign; the accused had been deprived of the benefit of certain evidence, and many people had requested that he be pardoned. Afterward, in 1921, Taylor was disbarred by the Harlan Circuit Court for obstructing justice in having hired witnesses not to appear against a client in a

criminal prosecution, and this Court affirmed the judgment of disbarment. Taylor v. Commonwealth, 192 Ky. 410, 233 S. W. 895. Six years later, in February, 1927, Taylor sought reinstatement in the Harlan Circuit Court. The record in this present proceeding shows that evidence was heard by an investigating committee of the bar, concerning the conviction of the felony and the pardon. It does not appear that the cause for which the court had previously disbarred him was considered. It seems that objections to his reinstatement were withdrawn. An order of the court was entered reinstating Taylor as a member of the bar. The trial committee of the Board of Bar Commissioners expressed the opinion that his conviction of a felony constituted an irrevocable barrier to reinstatement; that the Harlan Circuit Court did not have jurisdiction to enter the order, hence that its judgment is void and not res adjudicata. Apparently, the full Board of Bar Commissioners, which reviewed the recommendation of the committee, concurred in that view.

The second ground upon which the respondent's disbarment is recommended also presents novel and peculiar circumstances.

On August 18, 1943, a suit was filed in the Bell Circuit Court by Nellie Taylor against the respondent as defendant alleging their marriage and seeking a divorce from him. He was served with summons that day, and the next day, August 19th, he was present when the plaintiff gave her deposition in which she swore that they had been married in Knoxville. He caused or permitted to be put in the record the statement that he had no defense to make and declined to cross examine the plaintiff. On August 30th the respondent took the record to the Circuit Judge in Harlan, where he lived, with a letter from the woman's attorney, with whom the respondent had often been associated in the practice, requesting that the decree be dated back to August 19th, the day the deposition was given. A deputy circuit court clerk testified that the endorsement by the judge on the record that a divorce was to be granted may have been dated August 19th, although he hadn't paid much attention to it. When he declined the respondent's request

that the judgment be entered eleven days back, because there were three intervening pages of orders and it would have "messed up" the book, the respondent took the record away and he had not seen it since. No judgment of divorce was ever entered. The respondent had married another woman on August 25th. On this proceeding he testified that he had boarded with Nellie Epperson (plaintiff in the divorce suit) about two years and for some unaccountable and unfounded reason it had been rumored in the community they were married; that she had suggested that she sue him for divorce because "that will make it all right and keep down suspicion and protect my reputation"; and that he had consented to the proceeding for that reason. He testified that she had been in a hurry to get the decree as she was going to Detroit, where her daughters were, and "wanted to submit it for judgment on account of some property rights." He happened to be going to Harlan to attend to some other business on August 30th and the plaintiff's attorney, W. L. Hammond, asked him to take the record to the judge as he had promised his client he would have the case submitted immediately. Mr. Hammond's letter stated that Mr. and Mrs. Taylor were having some trouble and that legal ground for divorce had been proved, and that he would like that the order go as of the date the deposition was filed "as it was understood by the parties that I would carry the papers to Harlan on that date but I could not get away from home." The endorsement of the judge on the record shows that the date "August 30th" had been changed by a pen to the 19th. No effort was made to prove whether this was changed by the judge or another. The respondent never told the judge that he and the plaintiff were not husband and wife, nor did he reveal that fact, or claimed fact, to Mr. Hammond until some time after the divorce proceeding had been submitted.

We pass over as unnecessary the consideration of the first ground upon which the recommendation that the respondent should be disbarred and the complex legal questions which it presents, deeming the second ground alone as requiring his disbarment.

There is no occasion to hunt through the lawbooks for authorities to support the conclusion that the conduct of

the respondent was reprehensible and in violation of his obligation as a member of the bar. He is guilty of deceit and assisting to perpetrate a fraud upon the court. There is no condonation. The respondent's explanation for the collusion is weak, that it was to favor the woman seeking to dissolve a marriage to himself which he says never occurred, and this for the ridiculous reason that she wanted to have some sort of property right adjusted. Is this conduct not as reprehensible as knowingly exhibiting to the court false and fraudulent affidavits in order to obtain some advantage for a client; or knowingly and deliberately presenting perjured testimony; or having a certificate to a legal paper falsely executed? These have been deemed sufficient causes for disbarment. 5 Am. Jur., Attorneys at Law, Sec. 262, 263; Annotation 14 A. L. R. 868; Rice v. Commonwealth, 57 Ky. 472, 18 B. Mon. 472; Davis v. Commonwealth, 223 Ky. 90, 2 S. W. 2d. 1038; In re Gilbert, 274 Ky. 187, 118 S. W. 2d. 535. The respondent not only sat by and permitted the evidence which he now says is false to be presented without denial, but actually presented the record to the court, and then sought to secure the entry of the judgment of divorce eleven days before the court had read the record and concluded that the decree should be granted. His marriage to another during that intervening period is extremely significant. Then when the clerk declined to enter it as desired, he abstracted the record and kept it until sometime during the inquiry by the Board of Bar Commissioners into the charge of unprofessional conduct when he returned it to the clerk's office. If this woman was in fact his wife, then this conduct which prevented the entry of the divorce decree according to the court's order is perhaps a greater turpitude.

As was well said in People ex rel. Atty. Gen. v. Beattie, 137 Ill. 553, 574, 27 N. E. 1096, 31 Am. St. Rep. 384, a lawyer "owes the duty of good faith and honorable dealing to the judicial tribunals before whom he practices his profession. He is an officer of the court—a minister in the temple of justice. His high vocation is to correctly inform the court upon the law and the facts of the case, and to aid it in doing justice and arriving at correct conclusions. He violates his oath of office when he resorts to deception or permits his

clients to do so." And as was observed by Chief Justice Marshall in Ex parte Burr, 9 Wheaton, 168: "On one hand, the profession of attorney is of great importance to an individual and the prosperity of his whole life may depend upon its exercise. On the other hand, it is extremely desirable that the respectability of the bar should be maintained and that its harmony with the bench should be preserved."

When a lawyer enters into such practices as are admitted and proved in this proceeding, he should expect that the courts will protect themselves and the members of the bar who appreciate the responsibilities of their profession from such conduct.

The rule issued against the respondent to show cause why the recommendation and report of the Board of Bar Commissioners should not be confirmed is made absolute. The report is confirmed and an order will be entered disbarring the respondent from the practice of law in the Commonwealth.

Whole Court sitting.

FILE COPY

FILED
JAN 22 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 770

JAY H. TAYLOR,

Appellant,

vs.

THE KENTUCKY STATE BAR ASSOCIATION

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF KENTUCKY

APPELLANT'S BRIEF IN OPPOSITION TO THE MOTION TO DISMISS

JAY H. TAYLOR,
Pro se.

INDEX

Subject Index

	Page
Appellant's brief in opposition to the motion to dismiss	1

Table of Cases Cited

Gaffney v. *Switow*, 211 Ky. 232, 277 S. W. 453	4
Hazel Green Oil and Gas Co. v. *Collier*, 130 Ky. 132, 112 S. W. 1090	3

Statutes Cited

Constitution of the United States, 14th Amendment	2
Kentucky Revised Statutes, Section 30.100	2
30.170	1, 2, 3
Rules of the Court of Appeals of Kentucky, Subsection 2 of Rule 9	4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 770

JAY H. TAYLOR,

Appellant,

vs.

KENTUCKY STATE BAR ASSOCIATION,

Appellee

RESPONSE STATEMENT OF APPELLANT TO APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS APPEAL.

MAY IT PLEASE THE COURT:

The appellee, in its statement opposing jurisdiction and motion to dismiss appeal herein, asserts the lack of jurisdiction on the ground that appellant failed to bring into issue the validity of Section 30.170 of the Kentucky Revised Statutes as being repugnant and in conflict with the Federal Constitution, claiming and asserting that said issue was never raised in the Kentucky Court of Appeals by the appellant in the pleadings or otherwise in the original proceeding.

Appellant, in response to appellee's said statement opposing jurisdiction, says:

Appellant, in his petition for a rehearing, set forth two grounds upon which he asked the Kentucky Court of Appeals to reconsider its findings; he asked the Kentucky Court of Appeals to reconsider the constitutionality of Section 30.100 as being repugnant and in conflict with both the State and Federal Constitutions. This section, if held constitutional, put a final and permanent end to appellant's rights to practice law in the State of Kentucky.

Appellant did for the first time attack the constitutionality of Section 30.170 of the Kentucky Revised Statutes in his Petition for a Rehearing. It was the contention of the appellant that Section 30.170 is unconstitutional and is violative of the due process clause of the United States Constitution, which is set forth in the Fourteenth Amendment to the United States Constitution, and that the procedure which was followed by the Kentucky Court of Appeals under said section of said statute, in reaching its opinion in this case, was void. If the said section of the statutes is unconstitutional, then the procedure had under said section of said statute and the judgment predicated thereon would necessarily be void.

It is now the contention of appellant in this response that the question of the validity of a state statute may be brought into question in a petition for a rehearing, although said question of the validity of said statute was not in issue in the original proceedings. Because if the statute is void, any and all procedure had under said statute is also void *ab initio*.

Section 30.170 provides that all laws or parts of laws in conflict herewith are hereby repealed to the extent of said conflict, and that the said rules and regulations promulgated by the Kentucky Court of Appeals shall supersede

all laws and parts of laws in conflict herewith. It is the position of the appellant that Section 30.170, which undertakes to, and does vest the Kentucky Court of Appeals with the authority to make rules and regulations which supersede a statute, is certainly void, and that said appellant may attack the validity and bring in issue the constitutionality of said statute in his petition for a rehearing.

Ground One upon which appellant asked the Court for a rehearing in his petition therefor, was squarely before the Court in the original proceedings as well as in the Petition for a Rehearing; notwithstanding, the said Court of Appeals failed and refused to pass upon or to decide whether Section 30.100 was or was not constitutional, which placed the appellant in a "piggly wiggly" situation, or like a mariner at sea without a compass and therefore unable to find his way through the stormy waves of the sea.

The appellee cites the opinion of the Kentucky Court of Appeals in the *Hazel Green Oil and Gas Company* against *Collier*, reported in 130 Kentucky, page 132, 112 S. W., page 1090, as being in point on the question that appellant could not raise the validity or the constitutionality of a statute which was not brought into question in the original proceedings, but which was raised for the first time in a Petition for a Rehearing. Appellant has carefully read the opinion in that case, and the petition for a rehearing in that case did not attack or undertake to bring in issue the validity of a state statute, but undertook to and did set up an independent action unrelated to the original action. The original action in that case sought to enforce or cancel a lease contract. In the petition for a rehearing in that case, the appellee sought the right to remove certain properties and fixtures which it had placed on the land covered by the lease contract, which had no relation to or with the original proceedings, and to obtain this relief it would have been neces-

sary for the appellee to institute a new and independent action. Therefore, said opinion in that case could not be in point or controlling in this case.

However, the Kentucky Court of Appeals held in the case of *Gaffney* v. *Switow*, 211 Ky. 232, 277 S. W. 453, that

> "• • • A case is considered by the court, which determines whether the judgment shall be affirmed or reversed and also determines what shall be written in the opinion. Opinion is then prepared by the Judge or the Commissioner having the record, and is then read to the court, and, if need be, corrected by it. It is then handed down. It is the opinion of the court and is often not written as a writer would have written if it were his personal opinion. If the facts of the case are fairly stated in the opinion, the conclusion of law may be accepted as the conclusion of the court on the law of the case. The writer of the opinion is responsible for the statement of the facts but the court alone is responsible for the conclusion of law drawn from those facts.
>
> "When a petition for a rehearing is filed in a case written by one of the Commissioners, the record is sent to one of the Judges. If a petition is filed in a case written by one of the Judges, the record is sent to a Judge other than the writer of the opinion. In either case, the Judge to whom the record is sent examines the case and reports to the court the questions of law and fact. The case is then reconsidered by the court, and such disposition made as the court determines."

The Kentucky Court of Appeals under Subsection 2 of Rule 9 considers all questions presented to it in a petition for a rehearing as stated in the above case.

A statute which is in violation of, and in conflict with, and is repugnant to the State or Federal Constitution cannot be binding against the rights of the citizens of the United States; and a statute which violates and infringes upon the rights of the citizens of the United States and in violation

of the Federal Constitution, certainly can be brought into question in the State Court in a petition for a rehearing.

WHEREFORE, appellant respectfully submits this, his response to appellee's statement opposing jurisdiction, and moves the Court that same be filed and considered by the Court.

JAY H. TAYLOR,
Attorney for Appellant.

FILE COPY.

Office - Supreme Court, U. S.
FILED
JAN 22 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 770

JAY H. TAYLOR,

Appellant,

vs.

THE KENTUCKY STATE BAR ASSOCIATION

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF KENTUCKY

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

ELDON S. DUMMIT,
Attorney General of Kentucky,
BEN B. FOWLER,
Assistant Attorney General of Kentucky,
Counsel for Appellee.

INDEX

Subject Index

	Page
Statement opposing jurisdiction and motion to dismiss	1

Table of Cases Cited

Cleveland and Pittsburg Railroad Co. v. *City of Cleveland*, 235 U. S. 50, 35 Sup. Ct. 21, 59 L. Ed. 127	4
Fullerton v. *Texas*, 196 U. S. 192, 25 Sup. Ct. 221, 49 L. Ed. 443	5
Hazel Green Oil and Gas Co. v. *Collier*, 130 Ky. 132, 112 S. W. 1090	6
Taylor, In re, 300 Ky. 448, 189 S. W. (2d) 403	3
Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 112, 29 Sup. Ct. 227, 53 L. Ed. 431	5

Statutes Cited

Constitution of the United States, 14th Amendment	5
Kentucky Revised Statutes:	
Section 30.100	2, 3
Section 30.170	2, 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 770

JAY H. TAYLOR,

Appellant,

vs.

KENTUCKY STATE BAR ASSOCIATION,

Appellee

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS APPEAL

MAY IT PLEASE THE COURT:

Appellee, believing that the matter set forth will demonstrate the lack of substance in the questions raised by this appeal, files this his statement in opposition to Appellant's statement as to jurisdiction, and includes herein his motion to dismiss the appeal.

The matters here relied upon by appellee are more particularly stated below:

This Court does not have jurisdiction of the Appeal herein, for the reason that the appellant is attempting to bring into issue the validity of a statute of Kentucky under the Federal Constitution; which issue was never raised in

the Kentucky Court of Appeals by the Appellant in the pleadings or otherwise nor was this issue considered in the opinion rendered by the Kentucky Court of highest resort.

The Kentucky Court of Appeals is authorized by Kentucky Revised Statutes, Section 30.170 to establish practice and procedure for disciplining, suspending and disbarring attorneys. Under its inherent power to govern attorneys, who are its officers, and under the authority of the cited statute, the highest Court of Kentucky has promulgated rules governing the procedure to be followed in order to try attorneys for professional misconduct. These rules provide for the disbarment of attorneys when their professional misconduct warrants such serious action, and are set out in full in the Appellant's Statement in Support of Jurisdiction.

The Appellant was tried pursuant to these rules. A Complaint alleging several instances of professional misconduct on the part of the Appellant was duly filed with the Board of Bar Commissioners. The Complaint also alleged that Appellant had been convicted of a felony. Kentucky Revised Statutes 30.100 states that any person who has been convicted of a felony cannot practice law in the state. The appellant filed an Answer which in general denied all the allegations and averred that Kentucky Revised Statutes 30.100, providing that any person convicted of a felony could not practice law in Kentucky, was of no effect since it was in violation of the Federal Constitution. The Board of Bar Commissioners after hearing all the evidence at the trial, found that the Appellant was guilty on two separate and unrelated counts; one of having been convicted of a felony, the other of having lent his aid in the perpetration of a fraud on the Harlan Circuit Court. Accordingly, the Board recommended to the Court of Appeals that the Appellant be permanently disbarred from the further practice of

law in Kentucky. A rule then issued from the Court of Appeals to the Appellant to show cause why the award disbarring him should not be enforced. Appellant filed an Answer and Response in which he set up a defense to the Finding that he was guilty of having been convicted of a felony and which further set out that Section 30.100 of the Kentucky Revised Statutes was void as being repugnant to the Federal Constitution; the Answer and Response further denied his participation in any fraud on the Harlan Circuit Court as an avoidance of the Finding that he was guilty of aiding in the perpetration of such a fraud. In due time the Appellant filed a brief setting out his argument before the Court; he later filed a supplemental brief. Reading these two briefs together it appears that the Appellant's argument followed the issues pleaded in his Answer and Response, and that the only possible federal question raised was that Section 30.100 of the Kentucky Revised Statutes was void as being repugnant to the Federal Constitution.

The Kentucky Court of Appeals in its opinion, which is a part of this record, and is reported as *In Re Taylor,* 300 Ky. 448, 189 S. W. (2d) 403, expressly declined to pass on the question raised by the Finding that the Appellant had been convicted of a felony, deeming the fraud perpetrated on the Harlan Circuit Court alone as sufficient for disbarment. Hence, the question raised as to the constitutionality of Section 30.100 of the Kentucky Revised Statutes was not considered, and the Appellant suffered no prejudice from the operation of that statute. In considering the sufficiency of the alleged fraud of the Appellant for disbarment, the Court properly approached this issue on its merits alone as that was the only question raised by the pleadings or by the arguments.

The Appellant, after the adverse opinion of the Kentucky Court of Appeals was rendered, filed a Petition for Re-hearing. In this petition the Appellant for the first time argued that Kentucky Revised Statutes 30.170, allowing the Court of Appeals to provide for disbarment of attorneys, and that the rules so provided by the Court of Appeals were in violation of the Constitution of the United States. The Court of Appeals, without rendering any opinion or without assigning any reason, overruled the petition.

It is well settled that the Supreme Court of the United States will not consider any appeal from the highest court of a state unless a federal question was presented to the state court, and unless this question was expressly or necessarily decided by the state court. In the case of *Cleveland and Pittsburgh Railroad Company* v. *City of Cleveland*, 35 Sup. Ct. 21, 235 U. S. 50, 59 L. Ed. 127, the Court said:

> "In order to bring a case here * * *, it is well settled that the Federal right must have been set up and adjudicated against the claimant by the judgment of the state court. It is equally well settled that the contention made and passed upon in the state court cannot be enlarged by assignments of error made to bring the case into this court. This proposition is too well settled to need discussion."

The record clearly shows that the only federal question involved in this action was whether the Kentucky Statute prohibiting any person who had been convicted of a felony from practicing law was valid under the Constitution of the United States. This question was expressly left undecided in the determination of the case and is of no more value to the Appellant in fixing the jurisdiction of this court than if it had been considered and decided in the Appellant's favor.

The only question remaining is the effect of the Appellant's Petition for Re-hearing. The attempt was made in this petition to bring into issue the validity of the entire procedure under which the Appellant was tried. Appellant asserted that the statute allowing the Court of Appeals to make rules governing procedure for disbarring attorneys, and that the rules so made by the Court violated his rights under the Fourteenth Amendment to the Constitution of the United States. This petition was overruled without an opinion.

The rule is firmly established that an attempt to assign new errors in a Petition for Re-hearing in a state court which is overruled without an opinion passing on federal questions cannot avail to import such questions into the record so as to sustain a writ of error from the Federal Supreme Court to the state court. *Waters-Pierce Oil Company* v. *Texas,* 212 U. S. 112, 29 Sup. Ct. 227, 53 L. Ed. 431. In the case of *Fullerton* v. *Texas,* 196 U. S. 192, 25 Sup. Ct. 221, 49 L. Ed. 443, the Appellant attempted to raise a federal question for the first time in a Petition for Re-hearing, the state court overruled the Petition and rendered an opinion which made no reference to the federal question. The United States Supreme Court in its opinion therein said:

> "But on the face of the record proper and from the opinions, the reasonable inference is that the court may have denied the application (*for re-hearing*) in the mere exercise of a discretion, or declined to pass on the constitutional question, in terms, because it was suggested too late." (Italics ours.)

The Kentucky Court of Appeals has overruled Petitions for Re-hearing on the express ground that the Petition raises a point not brought in issue or considered by the

Court in its original opinion. *Hazel Green Oil and Gas Company* v. *Collier,* 130 Ky. 132, 112 S. W. 1090.

WHEREFORE, Appellee respectfully submits this statement and moves the Court to dismiss the appeal.

ELDON S. DUMMIT,
Attorney General for the Commonwealth of Kentucky;

BEN B. FOWLER,
Assistant Attorney General, Counsel for Appellee.

(2468)

No. 770. TAYLOR *v.* KENTUCKY STATE BAR ASSOCIATION. Appeal from the Court of Appeals of Kentucky. February 11, 1946. *Per Curiam:* The motion to dismiss is granted and the appeal dismissed for the want of a properly presented substantial federal question. Appellant *pro se*. *Eldon S. Dummit* for appellee. Reported below: 300 Ky. 448, 189 S. W. 2d 403.